Medical Marijuana Establishments FAQs

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What does the date April 1, 2014 signify?

There has been a great deal of misconception surrounding this date. Despite the many misconceptions, April 1, 2014, is the date by which the Division must adopt regulations as it determines to be necessary or advisable to carry out the provisions of NRS 453A.320 to 453A.370, inclusive. *(NRS 453A.370)*

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APPLICATIONS:

When will the applications for certification be available for Nevada medical marijuana dispensaries, testing laboratories, cultivation facilities and production facilities?

The proposed regulations (R004-14P) are scheduled to be heard at the March 14, 2014, meeting of the State Board of Health (SBOH). The Administrator of the Division is using this forum for the public hearing, and the Administrator will consider the regulations for adoption on this day. If R004-14P is adopted it will go to the Legislature, to a body called the Legislative Commission (Commission). The Legislative Commission will hold a meeting at some point, take public testimony, and decide whether to approve R004-14P. The Commission cannot make any changes to the regulations. If the Legislative Commission does not approve R004-14P, the regulations will be returned to the Division for corrective action.

As R004-14P is currently written, Section 25 outlines how the Division will post notice 45 days prior to the 10-day window for all application types to be submitted. The Division will have 90 days to complete their review of the submitted applications. Applications received before opening or after closing of the 10-day window will not be considered.

Although not specified in R004-14P, when the solicitation is announced, it will also identify whether applications must be postmarked within the 10-day period or physically received in a specified office of the Division.

Section 25 of R004-14P explains the application solicitation process. Subsection 2 specifies that the Division will identify the point values it will allocate to each applicable portion of the application at the same time the Division announces it will solicit applications.

Where can I find information about what happens if two applicants receive the same number of points (tied)?

Section 29(2) of R004-14P specifies the criteria the Division will use to determine the applicant who ranks higher in the case of a tie.

Does it make any difference who we designate as our "responsible party" for communication with the Division through the application process?

Section 23(1) of R004-14P requires applicants to designate one person as the person responsible "to provide information, sign documents or ensure actions are taken." This provision is very important when working with the Division. The Division will work through this designated individual, and if the individual is non-responsive, it may jeopardize the establishment's certificate.

How will the Division process applications with respect to "monopolistic practices" as outlined in NRS 453A.326?

The Division will evaluate ownership of the medical marijuana establishments (MMEs) as part of the establishment review and ranking process. There will be many factors considered including:

- The county identified in each application.
- The ownership percentages of individuals within each entity that applies (if applicable).
- The total number of establishments (cultivators + dispensaries + independent laboratories + production facilities) the Division certifies in each county.
- How each application ranks, and other factors.

Once all of these factors are known, then potential monopolies should be able to be identified by the Division. The Division expects the application form to give the applicant, if they are submitting multiple applications, the opportunity to rank their preference of certifications in the event one establishment application is successful and another is not, for whatever reason.

What if a local government limits the number of establishments it will authorize in its jurisdiction?

Section 28(1) of R004-14P specifies four areas that will be reviewed to determine which applications will continue through the review process. There has been a lot of discussion about whether local governments will allow establishments, not allow them, or require prior approval despite the requirement in the regulations to rank applicants. Nothing formal has been received at this time from any local government indicating a decision one way or another. Therefore, pursuant to this version of the regulations, if a local government prohibits an establishment in its jurisdiction, such as has been done in Lyon County for its unincorporated areas, the Division must still accept the application and rank it. If an applicant meets the minimum requirements of the Division and it ranks accordingly, the application will be forwarded to Lyon County, and Lyon County may deny the application. At the point that Lyon County denies the application, the Division will then deny it as well.

Can I get some clarification related to the meaning of "separate building" as specified in NRS 453A.350?

An applicant may locate an establishment in a building that shares a common wall with another business, as long as the applicant demonstrates how it meets the requirement of being separate from other businesses or entities that may share the common wall.

An applicant may propose applications for a dispensary, a cultivation facility and a production facility that result in each of those establishments, under the same ownership and management, occupying the same space. Separate fees will be required for each establishment type, and the applicant must declare whether approval of all establishments are dependent on each other. That is, if one of the establishment types is not approved, the applicant must declare that he or she no longer wishes to have the other two establishment types approved.

An applicant must also comply with any local ordinances and rules established in regard to this guidance.

Where can I find information related to start-up and day-to-day operation requirements for MMEs?

Section 26(11) of R004-14P has the provisions related to the start-up as well as the day-to-day operations of the establishment. The Division expects that owners, officers and board members fully intend to operate in the manner specified in their response to this subsection. ***There will be a temptation to use a template borrowed from another operation. If that is done, the Division advises reading it fully, changing names so they reflect the establishment and ensuring a full understanding of each provision put forward.*** We find that establishments face the most trouble during inspections when they do not fully implement policies they put forward. Not understanding one's own policies and carrying them out as indicated could result in disciplinary action by the Division. Remember, the response in this subsection must comply with these regulations and the Nevada Revised Statutes. An applicant can go beyond the regulations and statutes but will be held accountable, during an inspection, of understanding and carrying out all the aspects of what was identified in response to this subsection.

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CULTIVATION:

Where is a cultivator supposed to get marijuana plants, seeds or clippings to start growing? Is the Division willing to adopt a "don't ask don't tell" policy?

According to NRS 453A.352 (5) **A medical marijuana dispensary and a cultivation facility may acquire usable marijuana or marijuana plants from a patient who holds a valid registry identification card, or the designated primary caregiver of such a patient. Except as otherwise provided in this subsection, the patient or caregiver, as applicable, must receive no compensation for the marijuana. A patient, who holds a valid registry identification card, and the designated primary caregiver of such a patient, may sell usable marijuana to a medical marijuana dispensary one time and may sell marijuana plants to a cultivation facility one time.**

After April, 1, 2014, NRS 453A.200(3)(b)(2) allows a person who holds a valid registry identification card to possess 12 marijuana plants.

No. The Division cannot recommend a cultivator engage in activities outside of the law.

Is there a cap on cultivation establishment certificates?

No. The Division will issue certificates to cover the state capacity.

Can a cultivation establishment transfer their product across *COUNTY* lines?

Yes. However, **no marijuana product may be transferred over state lines**.

If one commercial property has several buildings and each building has its own unit number, could multiple MMEs locate on that same property? Could each building be leased to separate certificate holders?

This question should be posed to the local governmental agency where the facilities are proposed to be located.

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DELIVERY SERVICES:

Can a medical marijuana establishment hire an independent delivery service to transport marijuana or marijuana products?

No. Only those persons certified by the State may possess marijuana or marijuana products. Agent cards are tied to specific MMEs so an independent delivery service would be in violation of the law.

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FINANCIAL:

What fees will be required for establishing and renewing a MME in the State of Nevada?

Section 49(1) of R004-14P identifies fees related to certificates and agent cards.

Types of MME Certificates/Agent Cards	Fee
For the **initial issuance** of a medical marijuana establishment registration **certificate** for a medical marijuana **dispensary**.	$30,000
For the **renewal** of a medical marijuana establishment registration **certificate** for a medical marijuana **dispensary.**	$5,000
For the **initial issuance** of a medical marijuana establishment registration **certificate** for a **cultivation facility.**	$3,000

Types of MME Certificates/Agent Cards	Fee
For the **renewal** of a medical marijuana establishment registration **certificate** for a **cultivation facility.**	$1,000
For the **initial issuance** of a medical marijuana establishment registration **certificate** for a facility for the **production of edible marijuana products or marijuana-infused products.**	$3,000
For the **renewal** of a medical marijuana establishment registration **certificate** for a facility for the **production of edible marijuana products or marijuana-infused products.**	$1,000
For the **initial issuance** of a medical marijuana establishment **agent registration card.**	$75
For the **renewal** of a medical marijuana establishment **agent registration card.**	$75
For the initial issuance of a medical marijuana establishment registration **certificate** for an **independent testing laboratory.**	$5,000
For the **renewal** of a medical marijuana establishment registration **certificate** for an **independent testing laboratory.**	$3,000

Section 49(2) of R004-14P: For the ongoing activities of the Division relating to the inspection of medical marijuana establishments, not related to processing an application by a medical marijuana establishment, the Division will collect an assessment from each medical marijuana establishment for the time and effort attributed to the oversight of the medical marijuana establishment that is based upon the hourly rate established for each inspector or auditor of medical marijuana establishments as determined by the budget of the Division

In addition to the fees described in the table above, each applicant for a medical marijuana establishment registration certificate must pay to the Division a one-time, nonrefundable application fee of **$5,000**; and the actual costs incurred by the Division in processing the application, including, without limitation, conducting background checks. (NRS 453A.344(2))

Any revenue generated from the fees imposed pursuant to NRS 453A.344 must be expended first to pay the costs of the Division in carrying out the provisions of NRS 453A.320 to 453A.370, inclusive; and if any excess revenue remains after paying the costs described in paragraph (a), such excess revenue must be paid over to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Do we need to show $250,000 liquidity for each establishment application?

The $250,000 requirement is based on a "per certificate" basis. For example, if one applies for a dispensary, edibles/infusions production and cultivation establishment, that model would require evidence of $750,000 ($250,000 per each certificate). The same applies to $5,000 non-refundable fee.

What is meant by the "source" of liquid assets in Section 26, subsection 3(b) of R004-14P?

Applicants need to provide as much confirmable detail as possible related to how the money was originally obtained. The Division will not provide advice on how to delineate this information or on whether a source is acceptable or unacceptable. Decisions in this regard will be made by the Division on a case-by-case basis as applications are reviewed.

Can you clarify "evidence of the amount of taxes paid to or other beneficial financial contributions made to, this State or its political subdivisions…" as provided in Section 26, subsection 4 of the R004-14P?

Applicants will need to do the best they can to identify documentable tax contributions. As it relates to "other beneficial financial contributions," applicants should justify and demonstrate how such contributions were beneficial. As applications are reviewed the Division will make decisions on a case-by-case basis as to whether a source is acceptable or unacceptable. The Division will not provide advice on how to delineate this information.

With respect to Section 35 of R004-14P is selling ownership interest within the ownership group allowed?

This section relates back to **NRS 453A.334, Registration cards and registration certificates nontransferable. [Effective April 1, 2014.]** The following are nontransferable:

1. A medical marijuana establishment agent registration card.
2. A medical marijuana establishment registration certificate.

(Added to NRS by 2013, 3708, effective April 1, 2014)

The Division's position is that this applies to selling to an outside person or entity and that transferring ownership interest within the ownership group is acceptable.

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LEGISLATIVE SUBCOMMITTEE ON THE MEDICAL USE OF MARIJUANA:

I am interested in being a member of the Subcommittee on the Medical Use of Marijuana. How can I apply?

(*This is a Legislative Committee, NOT a Committee of the Division).* Per Senate Bill 374 (2013) the Subcommittee on the Medical Use of Marijuana is appointed by the Chair of the Advisory Commission on the Administration of Justice. It is anticipated that the Chair may appoint members of the Subcommittee sometime after the Division of Public and Behavioral Health formally adopts regulations and begins issuing registrations to medical marijuana dispensaries and related entities. In the meantime, interested persons may download and submit an application to serve on the Subcommittee at

the following website: http://www.leg.state.nv.us/Interim/77th2013/Committee/LegAppointedCommittees/. The staff contact for the committee is Nick Anthony. His email is nanthony@lcb.state.nv.us. People who want more information about the Subcommittee can contact Mr. Anthony.

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NAMES OF MEDICAL MARIJUANA ESTABLISHMENTS:

Can an MME use a derivative of "pharmacy" in its MME name?

Chapter 639 of the NRS governing pharmacies has a clear definition of a pharmacy, and NRS 639.230 specifies that a person shall not use the word "prescription" or "pharmacy," "or similar words or words of similar import without first having secured a license" from the State Board of Pharmacy.

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TESTING OF MARIJUANA:

If we hire all the same qualified professionals can a cultivation, edibles/infusion production facility or dispensary MME test their own products?

An establishment may choose to test its marijuana in-house, but those results **may not** be made available to a consumer. **Only the results of the independent lab may be made available**. Additionally, those results **may not** be used to dispute the results of an independent laboratory.

Can any MME send marijuana or marijuana products to an out-of-state laboratory for testing?

NO. None of the four medical marijuana establishments may send marijuana or marijuana products to an out-of-state laboratory for testing. No marijuana or marijuana products are allowed to cross state lines.

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TRACKING:

Each MME is required to track from seed to sale; can the Division clarify what this means?

Section 26(8) of R004-14P makes reference to an integrated plan for the "…care, quality and safekeeping of medical marijuana from seed to sale...". The law allows the Division to issue certificates to four different types of establishments, and the law does not specify that a dispensary must be co-owned with a cultivation establishment. However, each establishment still has the obligation to identify how it will meet the requirements from "seed to sale." The Division will not advise an applicant on how to do that and will expect that this provision be included in the application.

Why is the Division tracking physicians who recommend marijuana to their patient?

The Division is following the mandate of the Nevada Legislature under subsection 6 of NRS 453A.370 that requires the Division:

In cooperation with the Board of Medical Examiners and the State Board of Osteopathic Medicine establish a system to:

(a) Register and track attending physicians who advise their patients that the medical use of marijuana may mitigate the symptoms or effects of the patient's medical condition;

(b) Insofar as is possible, track and quantify the number of times an attending physician described in paragraph (a) makes such an advisement; and

(c) Provide for the progressive discipline of attending physicians who advise the medical use of marijuana at a rate at which the Division and Board determine and agree to be unreasonably high